

1 channel with or a deal with XYZ channel. Have
2 you heard their pitch? Do you think there
3 would be customer interest? And we'll talk
4 through that.

5 Q Were there conversations about The
6 Tennis Channel that you would have had as part
7 of that monthly process prior to the May-June
8 2009 process?

9 A Oh sure. For all of 2005, 2006,
10 and 2007, we were working with The Tennis
11 Channel and the field to see what kind of deal
12 we could work out that would be a deal that
13 the field would find attractive to melt down
14 and/or give additional carriage.

15 Q And do you still have your notes
16 in front of you from the June 2009 call? I
17 think it's Exhibit 130.

18 A Yes.

19 Q I want to go back to a few items
20 you were asked about during cross. At the
21 bottom of the first page of Exhibit 130, you
22 have a reference to the West and cost is a big

1 issue. Do you see that?

2 A Yes.

3 Q Was that the first time you had
4 heard that comment from the West?

5 A No.

6 Q When had you heard that before and
7 from whom?

8 A When I reached out to the West,
9 specifically to Elaine Barden who is the head
10 of Marketing for the San Francisco Outer Bay
11 System, and I brought up to her that Tennis
12 Channel repeatedly had told me that she was
13 communicating with them that she was
14 interested in carriage. She brought this up
15 to me and said we absolutely cannot afford it
16 because we cannot substantiate
17 -- this is subscriber growth and/or subscriber
18 upgrades.

19 Q Now I want to pause on that.
20 Substantive subscriber growth and upgrades.
21 Put that into simple English for us. What
22 does that mean?

1 A Well, particularly in the Bay
2 Area, it would have been I think close to [REDACTED]
3 [REDACTED] in increase in programming expense for
4 them. So they would have had to have shown to
5 their GM for him to sign off on it that they
6 would have gained enough subscribers and/or
7 upgraded subscribers to higher levels of
8 packages to make up for [REDACTED] in
9 programming expense a year.

10 Q Now Enforcement Bureau counsel was
11 asking you during his questioning whether you
12 had done a number of projections for
13 subscriber growth or subscriber upgrades. Do
14 you remember those questions?

15 A Yes.

16 Q What information would you need to
17 do financial projections like that? In other
18 words, what would you need to have from the
19 field in order to put that in a model?

20 A I'd have to know from the field
21 what subscriber growth they think they would
22 see.

1 Q Okay. And was that the subject of
2 your inquiry to the field on June 8th of 2009?

3 A That's right.

4 Q And did anybody on the call tell
5 you they thought there would be any subscriber
6 growth?

7 A That's right. No one thought that
8 there would be subscriber growth.

9 Q Okay. And if there's no
10 subscriber growth, is there anything for you
11 to put into a model?

12 A No.

13 Q I want to cover very quickly a
14 couple of exhibits, Tennis Channel's counsel
15 asked you about. Do you still have Tennis
16 Channel Exhibit 506 in front of you?

17 A Yes.

18 Q This is the exhibit referring --
19 involving Mr. Dannenbaum, is that right?

20 A Excuse me, yes.

21 JUDGE SIPPEL: Bless you.

22 THE WITNESS: Thank you.

1 BY MR. CARROLL:

2 Q And I'm not sure you were asked
3 this, so let me ask you this. Do you remember
4 what the outcome of this inquiry was from Mr.
5 Dannenbaum?

6 A I recall that we did not do the
7 melts for him.

8 Q You recall that you did not do the
9 melts?

10 A That's right. He thinks we have a
11 big difference in what I think there is and he
12 thinks there is, so it was probably much less.

13 Q Do you remember what Mr.
14 Dannenbaum's reaction, he was on the
15 programming side at the time, right?

16 A Yes.

17 Q And he was asking you on the cable
18 side for a broader distribution here for
19 Versus and Golf, right?

20 A That's right.

21 Q Do you remember what his reaction
22 was to your response?

1 A Alan was very frustrated with me,
2 Mr. Dannenbaum.

3 Q You were also asked some questions
4 by Tennis Channel's counsel about another
5 exhibit. Let me see if I can get that in
6 front of us. Ah, this is Tennis Channel
7 Exhibit 31. Do you still have that? That's
8 the 2006 email with Mr. Lang.

9 A Yes.

10 Q All right, now you're not on these
11 emails, correct?

12 A That's right.

13 Q And Tennis Channel counsel was
14 asking questions about the top email and
15 whether that referred to an approval -- a form
16 being sent to Philadelphia for approval. Do
17 you remember that?

18 A That's right.

19 Q And the bottom email refers to
20 something called a CCR, do you see that?

21 A Yes.

22 MR. CARROLL: Here comes another

1 glossary term, Your Honor.

2 BY MR. CARROLL:

3 Q Can you tell us what a CCR is,
4 please?

5 A It stands for Channel Change
6 Request.

7 Q Okay. And what is the Channel
8 Change Request?

9 A It's the form that the field sends
10 up through several steps, but eventually gets
11 to our department that request changes to
12 their channel lineups. So whether they want
13 to launch a service, drop a service, dual
14 illuminate a service, change a channel number,
15 go part-time, whatever they want to do to the
16 channel line up, they sent up through a CCR.
17 It has to get approved by the GM, then the
18 region, then the division, and then up top,
19 headquarters.

20 Q Do you have a way on a computer of
21 keeping track of all these CCRs that you get
22 from the field?

1 A Yes, it's called Apex.

2 MR. CARROLL: Your Honor, may I
3 approach to present an exhibit?

4 JUDGE SIPPEL: Please.

5 MR. CARROLL: Thank you.

6 BY MR. CARROLL:

7 Q This is Comcast Exhibit 1302.

8 (Whereupon, the above-referred to
9 document was marked as Comcast
10 Exhibit 1302 for identification.)

11 Now I want to read every one of
12 these entries into the record.

13 (Laughter.)

14 MR. CARROLL: Sorry, Your Honor.

15 JUDGE SIPPEL: That's all right.
16 Go right ahead.

17 BY MR. CARROLL:

18 Q First, can you identify what this
19 exhibit is?

20 A This is a listing of all of the
21 data in my Apex database.

22 Q Okay, all the data for the CCRs?

1 A Yes.

2 Q And we're not going to go through
3 each entry, I assure you. Can you just show
4 us how to read the data though? It has a
5 heading in the left column that says CLS ID.
6 Is that the CCR ID number?

7 A No, I don't know what that is.

8 Q Okay. And we have the division
9 listed where the CCR comes from, correct?

10 A That's right.

11 Q The headend name, yes?

12 A Yes, that's right.

13 Q CLS name?

14 A Yes.

15 Q What is CLS name?

16 A I don't know what CLS stands for.
17 Essentially, hm. Adelphia East is I think the
18 area and the CLS name is actually, is the
19 actual channel line up. That CL probably
20 stands for.

21 Q Okay, and in the middle column F,
22 we have a CCR number, everyone gets an ID

1 number?

2 A The computer disk automatically
3 gives a number to file them by.

4 Q Okay. And then next to that we've
5 got an implementation date under Column G,
6 right?

7 A Right. That's the date the change
8 was made.

9 Q And then under Column H we have
10 the network. Does that tell you what channel
11 the CCR is for?

12 A That's right.

13 Q So on this first page they're all
14 Tennis, is that right?

15 A Tennis and Tennis high def.

16 Q Okay, and then under I we have
17 change action?

18 A That's right.

19 Q And what's that telling you?

20 A It's telling you what the CCR is
21 asking to do. So the first one is asking to
22 add Tennis.

1 Q Okay, and then is this a
2 spreadsheet that the second page of the
3 exhibit is a continuation of the first page?

4 A Yes, sir.

5 Q So we go from K and on the second
6 page if we followed we go from L to V with
7 more information about each of these CCRs,
8 right?

9 A Yes, sir.

10 Q Now the only reason I'm doing this
11 is I want to pick up on this Exhibit 31 is
12 referring to some CCR having been sent to
13 Philadelphia, right?

14 A That's right.

15 Q Okay, will you turn over to page -
16 - I'm going to use the Bates number in the
17 bottom corner, 46143 of Exhibit 1302 and if
18 you would take out 43 and 44 and put them next
19 to each other so the columns run across. And
20 tell me when you're ready.

21 JUDGE SIPPEL: What are the two
22 pages?

1 MR. CARROLL: It's 6143 and 6144,
2 Your Honor. They're in the middle of the
3 stack, the bottom Bates number in the right
4 corner is what I'm using.

5 JUDGE SIPPEL: 6143 is towards the
6 end of the stack.

7 THE WITNESS: Yes, it is.

8 MR. CARROLL: You're right, it is
9 toward the end. My apologies.

10 JUDGE SIPPEL: Go ahead.

11 BY MR. CARROLL:

12 Q Tell me when you're there, Ms.
13 Gaiski.

14 A I'm there.

15 Q And on 6143 and 44, can you tell
16 me whether there are any CCRs for The Tennis
17 Channel to be launched in the San Francisco
18 area that are listed there?

19 A I see line 4435.

20 Q 4435. Now the line you're
21 referring to there, that's the far left column
22 on the form.

1 A That's right.

2 Q Okay. And what do you have there
3 on 4435. Tell us what that says. West
4 Division San Francisco and then is there a
5 date for that?

6 A Right, saying that on December 6,
7 2006, Tennis was added. And if you go to the
8 next page --

9 Q Slow down. Before you go to the
10 next page, so December 6, 2006, that's just
11 within weeks of the Tennis Channel Exhibit 31
12 Mr. Phillips was asking you about, is that
13 right?

14 A That's right.

15 Q Okay, and tell us what this CCR is
16 for. And in particular, is this the CCR for
17 a launch on D1 or D2 or something else?

18 A No. If you look on the next page,
19 this is -- the CCR that was submitted was
20 submitted for sports tier.

21 Q How do you know that?

22 A If you look at the next page and

1 start back on line 4435 --

2 Q Yes.

3 A It says it went from nul, which
4 means it went from no carriage to Channel 411
5 and then it says it went from nul level of
6 service to DST, digital sports tier.

7 Q And that's under Column B?

8 A Yes.

9 Q Is this the CCR that you approved?

10 A Yes.

11 Q Okay. You can put that away.

12 JUDGE SIPPEL: What is the purpose
13 of --

14 MR. CARROLL: I'm going to move
15 that into evidence when I'm finished here,
16 Your Honor.

17 JUDGE SIPPEL: You don't need the
18 whole 1302 in, do you?

19 MR. CARROLL: I just need the two
20 pages. But I didn't want there to be an
21 objection that I hadn't put it in for
22 completeness. I'm happy to do just the two

1 pages.

2 JUDGE SIPPEL: How about the three
3 pages? Are you going to the 1302 which has
4 the Comcast exhibit on it.

5 MR. CARROLL: Right.

6 JUDGE SIPPEL: And it has a stamp
7 over here I guess which was used in
8 deposition. And for completeness, you need
9 Bates number 959, 960 and then similarly, two
10 more, 144 and 143.

11 MR. CARROLL: Let me restate that
12 for the record, so we will redesignate Comcast
13 Exhibit 1302 as containing three pages. The
14 first page with the Bates number --

15 JUDGE SIPPEL: Four pages.

16 MR. CARROLL: Four pages. Yes. I
17 need the first and second page. So we'll make
18 that 00045959 and 60. And then 00046144 and
19 45. We'll make it those four pages.

20 JUDGE SIPPEL: 46143 --

21 MR. CARROLL: 43 --

22 JUDGE SIPPEL: And 44.

1 MR. CARROLL: 43 and 44. That
2 will be the whole exhibit.

3 JUDGE SIPPEL: Thank you.

4 MR. CARROLL: Thank you, Your
5 Honor.

6 JUDGE SIPPEL: So you want to move
7 it in now?

8 MR. CARROLL: Yes, I'd like to
9 move it in with those four pages.

10 JUDGE SIPPEL: Any objection?

11 MR. PHILLIPS: No, Your Honor.

12 JUDGE SIPPEL: Comcast 1302 is
13 received in evidence as modified and explained
14 by Mr. Carroll. Thank you.

15 (The document, having been marked
16 previously for identification as
17 Comcast Exhibit 1302 was received
18 in evidence.)

19 BY MR. CARROLL:

20 Q And I guess the last question, Ms.
21 Gaiski, is Mr. Phillips had asked you some
22 questions about Golf and Tennis and whether

1 you'd given any consideration to them in your
2 discussions with Mr. Solomon in May and June
3 of 2009. Do you remember those questions?

4 A Yes.

5 Q Did Mr. Solomon ever to your
6 knowledge in the meeting with that phone call
7 complain in any way that he wasn't being
8 treated the same as Golf or Versus?

9 A No.

10 MR. CARROLL: No further
11 questions, Your Honor.

12 JUDGE SIPPEL: Anything more on
13 that?

14 MR. PHILLIPS: Just a few, Your
15 Honor.

16 RE CROSS EXAMINATION

17 BY MR. PHILLIPS:

18 Q Let me just ask you a few
19 questions, Ms. Gaiski, to follow up on some
20 things Mr. Carroll asked you. You said that
21 when you compared the NHL fee, Mr. Carroll
22 asked you what was the fee for Tennis Channel

1 and you said [REDACTED] cents?

2 A Yes.

3 Q That wasn't the fee under Tennis
4 Channel's proposal though was it? It wasn't
5 [REDACTED] cents at all, was it?

6 A No.

7 Q It was -- at D0 it was [REDACTED]
8 [REDACTED], correct?

9 A Well, the comparable fee would be
10 this [REDACTED] cents.

11 Q It would be [REDACTED] cents at D1, [REDACTED]
12 [REDACTED] and [REDACTED] cents in change at D0,
13 correct?

14 A Well, it's 2011 and my thing at [REDACTED]
15 percent discount has it at [REDACTED] cents.

16 Q And D0 would be around [REDACTED]
17 cents. Is that correct?

18 A D0 was [REDACTED] cents.

19 Q In 2011?

20 A Yes.

21 Q And for 2010 it would have been
22 around [REDACTED] cents?

1 A [REDACTED]

2 Q Thank you. NHL, you said, reduced
3 their fees so that you didn't have to pay much
4 more for the extra distribution. Did I
5 understand that correctly?

6 A That's right.

7 Q It's a small amount, but not a
8 lot, correct?

9 A That's right.

10 Q Now NHL also gave Comcast in that
11 transaction the rights to show Center Ice, is
12 that correct?

13 A I don't recall.

14 Q And even though the price was
15 reduced to this level, the NHL still had to
16 give equity in order to get broader
17 distribution, did they not?

18 A They gave equity. It was through
19 an MFN offer.

20 Q Well, the whole thing was through
21 an MFN offer, wasn't it?

22 A Yes.

1 Q And after they gave equity, they
2 got the broader distribution they were
3 seeking, correct?

4 A Yes, through the MFN offer.

5 Q Now you said something to me that
6 I just want to follow up on. You said that in
7 2005 to 2007 "we were working with the field
8 to melt down TC." Do you recall that
9 testimony in response to Mr. Carroll's
10 questions?

11 A We were talking to the field about
12 their interest.

13 Q You were talking to the field -- I
14 believe what you said to Mr. Carroll is you
15 were talking about opportunities to melt down
16 Tennis Channel during that time.

17 A I believe that's the same thing I
18 just said.

19 Q Are you sure about that, Ms.
20 Gaiki?

21 A Yes, in 2005, I was working with
22 Randy Brown who worked with Ken Solomon on

1 putting together a new economics that would
2 look interesting to the field and I believe we
3 helped Randy gather a couple meltdowns
4 specifically I think Jacksonville happened in
5 2005.

6 MR. PHILLIPS: Your Honor, I would
7 like to read from Ms. Gaiski's deposition
8 testimony on this subject. And I have a copy
9 of the transcript here and I'd like to give it
10 to Your Honor and Ms. Gaiski, if I can.

11 JUDGE SIPPEL: And also to Mr.
12 Carroll. He's got his there.

13 MR. PHILLIPS: I think he has it.

14 MR. CARROLL: I have it.

15 JUDGE SIPPEL: You may proceed as
16 you have indicated.

17 MR. PHILLIPS: Thank you.

18 JUDGE SIPPEL: This is a March 3,
19 2011 deposition.

20 BY MR. PHILLIPS:

21 Q Ms. Gaiski, if I may ask you to
22 turn to page 83. Let me know when you are

1 there.

2 And I would like to start up there
3 at line 3, do you see that?

4 JUDGE SIPPEL: Hold it. I'm
5 almost with you.

6 MR. PHILLIPS: Okay.

7 (Pause.)

8 JUDGE SIPPEL: Okay.

9 BY MR. PHILLIPS:

10 Q Now my colleague, Ms. Pogoriler
11 was asking you questions at your deposition.
12 Do you recall that?

13 A Yes.

14 Q And Ms. Pogoriler asked you at
15 line 3, "Didn't you direct Bay Area either
16 directly or through the division or regional
17 intermediaries not to launch Tennis Channel on
18 D2?"

19 Do you see that question?

20 A Yes.

21 Q Now that was right around 2006 or
22 the end of 2006 like we looked at in those

1 earlier exhibits, correct?

2 MR. CARROLL: I object, the
3 reference to time is on the prior page of the
4 deposition.

5 MR. PHILLIPS: That is true. If
6 we go back to the prior page it says, it
7 refers to carriage decisions in 2005 and 2006.
8 And you see that at the bottom of the prior
9 page.

10 Thank you, Mr. Carroll.

11 MR. CARROLL: You're welcome.

12 BY MR. PHILLIPS:

13 Q And let me start at the top again.
14 I just read Ms. Pogoriler's question. "Didn't
15 you direct Bay Area either directly or through
16 the division or regional intermediaries not to
17 launch Tennis Channel on D2?"

18 Your answer was "No, we did not
19 direct people not to launch. What we were
20 doing at the time, as I have mentioned, is
21 this sports tier strategy. So the company had
22 the strategy of launching a sports tier and we

1 were very much communicating that strategy
2 talking to the field. It took a long time to
3 launch cable systems. And so we had field
4 phone calls and we'd give them guidelines on
5 what services should be on those tiers. And
6 Tennis was always part of that guidance."

7 Then Ms. Pogoriler asked you "So I
8 want to focus on D2 and actually not the
9 sports tier for a second. Are you saying you
10 didn't instruct Bay Area either directly or
11 indirectly to refrain from carrying Tennis
12 Channel in D2?"

13 Your answer was "Well, I guess the
14 best way to answer that is we were always
15 talking about sports tier. Everybody in the
16 field knew that the strategy of the sports
17 tier, that the company's strategy was sports
18 tier, and they all knew what channels were on
19 that. So when you ask me did I communicate it
20 indirectly, I guess you could back into yes by
21 way of me talking to the field on a regular
22 basis about sports tier and the strategy for

1 our sports tier. And remember, San Francisco
2 still did not have sports tier. They didn't
3 have a sports tier yet. They didn't have any
4 carriage of Tennis Channel yet."

5 Ms. Pogoriler then asked you "When
6 did San Francisco sports tier launch?"

7 You answer: "My recollection is
8 the end of '06."

9 She asked: "And either before or
10 after the sports tier launched, I guess --
11 well, let me back up. Are you saying it was
12 sort of implicit in your urging to get the
13 sports tier out and get the networks on the
14 sports tier that they should not carry Tennis
15 Channel on D2?"

16 And your answer was "Was it
17 implicit? I think someone could come to that
18 conclusion."

19 Now did I read that correctly?

20 A Yes.

21 Q And you gave those answers at the
22 time of the deposition, did you, Ms. Gaiski?

1 A Yes.

2 Q Now let me ask you about Exhibit
3 1300 for a moment which is the exhibit that
4 Mr. Carroll put in front of you, the very
5 thick one.

6 JUDGE SIPPEL: Dramatically
7 reduced.

8 BY MR. PHILLIPS:

9 Q Dramatically reduced in a green
10 effort by Mr. Carroll. Now what I wanted to
11 understand about this is I looked through this
12 exhibit actually before coming in here,
13 believe it or not, and what I don't see is
14 when CCRs are denied, do you list CCRs being
15 denied on this exhibit?

16 A Well, I didn't put this exhibit
17 together. My IT folks did. I asked them to
18 pull all Tennis Channel activity.

19 Q And so you asked them for the
20 purposes of this lawsuit to put this exhibit
21 together?

22 A Yes.